RECORD
AND
BRIEFS

No. 10-1491

IN THE SUPREME COURT OF THE UNITED STATES

ESTHER KIOBEL, et al.,
Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

BRIEF OF HUMAN RIGHTS FIRST, THE ANTI-DEFAMATION LEAGUE, AND THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS ON REARGUMENT

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE ATS ALLOWS FEDERAL COURTS TO RECOGNIZE A CAUSE OF ACTION FOR A LIMITED NUMBER OF INTERNATIONAL LAW VIOLATIONS OCCURRING IN THE TERRITORY OF A FOREIGN SOVEREIGN 5

II. THE TEXT AND LEGISLATIVE HISTORY OF THE TVPA SUPPORT THIS INTERPRETATION OF THE ATS 10

III. THE ATS AND TVPA PROVIDE REDRESS TO VICTIMS OF SERIOUS HUMAN RIGHTS ABUSES 18

CONCLUSION 21

TABLE OF AUTHORITIES

FEDERAL CASES

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398 (1964) 6

Bolchos v. Darrel
3 Fed. Cas. 810 (D.C.S.C.) 5

Cabello v. Fernandez-Larios,
402 F.3d 1148 (11th Cir. 2005) 19

Chavez v. Carranza,
407 F. Supp. 2d 925 (W.D. Tenn. 2004) 19

Duplex Printing Press Co. v. Deering,
254 U.S. 443 (1921) 12

Edmonds v. Compagnie Generale Transatlantique,
443 U.S. 256 (1979) 12

In re Estate of Marcos Human Rights Litigation,
25 F.3d 1467 (9th Cir. 1994) 3, 8, 19

Filartiga v. Pena-Irala,
630 F.2d 876 (2d Cir. 1980) ..... *passim*

Kadic v. Karadzic,
70 F.3d 232 (2d Cir. 1995) 18

McKenna v. Fisk,
42 U.S. 241 (1843) 7

Reyes v. Lopez Grijalba,
No. 02-22046-CIV, slip op. (S.D. Fl. 2006) 19

Samantar v. Yousuf,
130 S. Ct. 2278 (2010) 19

Sosa v. Alvarez-Machain,
542 U.S. 692 (2004) ..... *passim*

Tel-Oren v. Libyan Arab Republic,
726 F. 2d 774 (D.C. Cir. 1984) 15

Xuncax v. Gramajo,
886 F. Supp. 162 (D. Mass. 1995) 19

FEDERAL STATUTES

28 U.S.C. § 1350..... *passim*

28 U.S.C. § 1350 (note) ..... *passim*

OTHER AUTHORITIES

3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 384 (1765-1769) 7

Abduction and Restitution of Slaves, 1 Op. Att'y Gen. 29 (1792)..... 5

Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*,
83 Am. J. Int'l. L. 461 (1989) 6

Breach of Neutrality, 1 Op. Att'y Gen. 57 (1795) 5

Brief of the United States as Amicus Curiae at 4, *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (Nos. 94-9035, 9409069) 9

H.R. REP. NO. 102-367 (1991) 12, 13, 15

Letter from Senator Dianne Feinstein, to Senator Arlen Specter (Oct. 25, 2005) 20

Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (No. 79-6090) 6, 9

Mexico Boundary, Diversion of the Rio Grande, 26 Op. Att'y Gen. 250 (1907) 5

Mostyn v. Fabrigas, 1 Cowp. 161 (K.B. 1774) 7

S. 1874, 109th Cong. (2005) 20

S. REP. NO. 102-249 (1991) 12, 14, 15

Statement on Signing the Torture Victim Protection Act of 1991, Mar. 12, 1992, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992) 17

Stout v. Wood, 1 Blackf. 71 (Ind. Circ. Ct. 1820) 7

THE FEDERALIST NO. 82 (Alexander Hamilton) (Clinton Rossiter ed., 1961) 7

Torture Victim Protection Act: Hearings and Markup Before the Committee on Foreign Affairs and Its Subcommittee on Human Rights and International Organizations, 100th Cong., (1988) 14

Torture Victim Protection Act Hearing of 1989: Hearing on S. 1629 and H.R. 1662 Before the Subcomm. on Immigration & Refugee Affairs of the S. Comm. on the Judiciary, 101st Cong. (1990) 12

Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) 10

Watts v. Thomas, 5 Ky. (2 Bibb) 458 (1811) 7

132 CONG. REC. S7062 (June 6, 1986) 10, 16

151 CONG. REC. S11423 (Oct. 18, 2005) 20

INTERNATIONAL AUTHORITIES

Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/28/Add.5 (2000). 9, 17

Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/48/Add.3 (2005)..... 17

INTEREST OF *AMICI CURIAE*

This Brief of *Amici Curiae* is respectfully submitted in support of the Petitioners pursuant to Supreme Court Rule 37 as well as this Court's order of March 5, 2012 requesting supplemental briefs on "[w]hether and under what circumstances the Alien Tort Statute, 28 U.S.C. §1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States."[1] All parties have consented to the filing of this brief.

Human Rights First ("HRF") is a non-profit, nonpartisan international human rights organization based in New York and Washington, D.C. HRF builds respect for human rights and the rule of law to help ensure the dignity to which everyone is entitled and to stem intolerance, tyranny, and violence. HRF, then known as the Lawyers Committee for Human Rights, played an important role in promoting the adoption of the Torture Victim Protection Act ("TVPA"). It gave testimony supporting the TVPA before the House Committee on Foreign Affairs in 1988 and the Senate Committee on the Judiciary in 1990.

The Anti-Defamation League ("ADL") was founded in 1913 to combat racial, ethnic, and

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[1] Pursuant to Supreme Court Rule 37(6), *Amici* affirm that no counsel for a party authored this brief in whole or in part and no person other than *Amici* or their counsel made a monetary contribution to this brief. Consent letters have been filed with the Court by the parties.

religious discrimination. Today, the League is one of the world's leading civil and human rights organizations, fighting hate, bigotry, and anti-Semitism. ADL's nearly 100-year history is marked by a commitment to protecting civil and human rights, both in the United States and abroad. In this connection, ADL has often filed amicus curiae briefs in cases arising under the TVPA.

The Leadership Conference on Civil and Human Rights is a diverse coalition of more than 210 national organizations charged with promoting and protecting the civil and human rights of all persons in the United States. The Leadership Conference was founded in 1950 by A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters, Roy Wilkins of the NAACP, and Arnold Aronson, a leader of the National Jewish Community Relations Advisory Council. The Leadership Conference works to build an America that is as good as its ideals, and towards this end, supports Congress's ability to provide victims of torture and other violations of international law with a civil remedy for crimes arising in the territory of a foreign sovereign.

Amici have a long-standing commitment to promoting respect for human rights, seeking redress for victims, and pursuing accountability for human rights abuses. *Amici* believe their professional expertise and knowledge of the Alien Tort Statute ("ATS") and Torture Victim Protection Act will assist this Court in its deliberations.

SUMMARY OF ARGUMENT

Congress adopted the Alien Tort Statute in 1789 as part of the First Judiciary Act. It now provides "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. According to this Court's seminal decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004), the ATS is a jurisdictional grant, which enables "federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law."

The history surrounding the ATS indicates it was meant to authorize federal courts to consider causes of action for a limited number of international law violations even when such actions occurred in the territory of a foreign sovereign. The ATS serves a vital role, allowing foreign nationals to bring claims for torture and extrajudicial killing as well as other serious violations of international law such as slavery, genocide, crimes against humanity, and war crimes regardless of where such acts were committed. This interpretation has been recognized since the adoption of the ATS and has been accepted by each branch of the federal government for many years. Indeed, this Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. at 732, cites approvingly to ATS cases involving claims arising in the territory of a foreign sovereign, including *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (Paraguay) and *In re*

Estate of Marcos Human Rights Litigation., 25 F.3d 1467 (9th Cir. 1994) (Philippines).

In 1991, Congress adopted the Torture Victim Protection Act to supplement and enhance the remedies afforded under the ATS. While foreign nationals had a right to pursue civil remedies in U.S. courts for serious human rights abuses such as torture or extrajudicial killing under the ATS, U.S. citizens had no comparable right. The TVPA addressed this omission in federal law by establishing a right of action for torture and extrajudicial killing, thereby affording U.S. citizens the same rights already granted to foreign nationals under the ATS. The TVPA's text and legislative history reaffirm the long-recognized understanding that the ATS allows federal courts to recognize causes of action for a limited number of international law violations occurring in the territory of a foreign sovereign.

The ATS and TVPA serve an essential function by providing redress to victims of serious human rights abuses. Both statutes apply to abuses occurring in the territory of a foreign sovereign. Limiting the ATS solely to cases arising in U.S. territory would eviscerate a legal framework that has been affirmed by the three branches of government on numerous occasions. This Court acknowledged the distinct and complementary roles of the ATS and TVPA in *Sosa v. Alvarez-Machain*, 542 U.S. at 728, 731. This relationship should not be changed in the absence of explicit congressional action.

ARGUMENT

I. THE ATS ALLOWS FEDERAL COURTS TO RECOGNIZE A CAUSE OF ACTION FOR A LIMITED NUMBER OF INTERNATIONAL LAW VIOLATIONS OCCURRING IN THE TERRITORY OF A FOREIGN SOVEREIGN

The Alien Tort Statute provides "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. The plain text and historical record support the application of the ATS to causes of action for violations of international law occurring in the territory of a foreign sovereign.

In 1795, for example, Attorney General William Bradford noted that British citizens injured in a French raid on a British colony had a civil remedy in the courts of the United States through the ATS. *Breach of Neutrality*, 1 Op. Att'y Gen. 57, 59 (1795). *See also Mexico Boundary Diversion of the Rio Grande*, 26 Op. Att'y Gen. 250, 253 (1907) (recognizing possible civil action under the ATS against a U.S. corporation for harm caused to Mexican citizens in Mexico); *Abduction and Restitution of Slaves*, 1 Op. Att'y Gen. 29, 30 (1792) (recognizing possible civil action under the ATS where the defendant had committed piracy by stealing slaves from a French colony).

In *Bolchos v. Darrel*, 3 F. Cas. 810 (D.C.S.C. 1795), the first reported case involving the ATS, a French plaintiff sought restitution for the seizure

and sale of slaves who had been taken from a captured Spanish prize vessel. Jurisdiction was premised on the ATS. The court found that it had jurisdiction, dismissing "all doubt upon this point." *Id.* at 810. The fact that the claims arose on a Spanish vessel did not preclude the application of the ATS.

One reason the drafters of the First Judiciary Act sought federal review of transitory torts involving violations of international law through the ATS was to promote uniformity in matters pertaining to foreign affairs. According to the Justice Department in its 1980 submission to the Second Circuit in *Filartiga v. Pena-Irala*, the ATS "is one of several provisions of the Judiciary Act 'reflecting a concern for uniformity in this country's dealings with foreign nations and indicating a desire to give matters of international significance to the jurisdiction of federal institutions.'" Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (No. 79-6090) *reprinted in* 19 ILM 585, 588 (1984) (*quoting Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964)).

Another reason the drafters of the First Judiciary Act sought review of transitory torts through the ATS was to fulfill the nation's duty to enforce international law. Considered in its historical context, the ATS "was a direct response to what the Founders understood to be the nation's duty to propagate and enforce those international law rules that directly regulated individual conduct." Anne-Marie Burley, *The Alien Tort*

Statute and the Judiciary Act of 1789: A Badge of Honor, 83 Am. J. Int'l L. 461, 475 (1989).

It would be contrary to longstanding legal practice to preclude tort claims arising out of actions that occurred in the territory of a foreign sovereign. The Framers understood that tort actions were considered transitory because the tortfeasor's wrongful act created an obligation that could follow her across national boundaries. *See, e.g.*, *Watts v. Thomas*, 5 Ky. (2 Bibb) 458 (1811); *Stout v. Wood*, 1 Blackf. 71 (Ind. Circ. Ct. 1820); *Mostyn v. Fabrigas*, 1 Cowp. 161 (K.B. 1774). This understanding of tort was well-recognized in the early case law of the U.S. Supreme Court.

> [T]he courts in England have been open in cases of trespass other than trespass upon real property, to foreigners as well as to subjects, and to foreigners against foreigners when found in England, for trespasses committed within the realm and out of the realm, or within or without the king's foreign dominions.

McKenna v. Fisk, 42 U.S. 241, 249 (1843). *See also* 3 William Blackstone, Commentaries on the Laws of England 384 (1765-69) ("[A]ll over the world, actions transitory follow the person of the defendant."); THE FEDERALIST NO. 82, at 491, 493 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of

dispute are relative to the laws of the most distant part of the globe.").

Finally, the ATS does not enforce U.S. law in the territory of foreign sovereigns. And, it does not enforce foreign law. Rather, it allows U.S. courts to adjudicate claims based on violations of clearly defined international norms that may have occurred in the territory of a foreign sovereign. As this Court rightly noted, ATS claims must "rest on a norm of international character accepted by the civilized world" and defined with specificity. *Sosa v. Alvarez-Machain*, 542 U.S. at 725. Any comity concerns that might exist over litigation that sought to enforce U.S. laws in foreign territory do not extend to ATS cases that seek to adjudicate claims based on widely accepted principles of international law. And, such an approach does not violate international law. As Justice Breyer noted in *Sosa*, "[t]he fact that this procedural consensus exists suggests that recognition of universal jurisdiction in respect to a limited set of norms is consistent with principles of international comity." *Id.* at 762 (Breyer, J., concurring).

For these reasons, the judiciary has consistently interpreted the ATS to authorize federal courts to consider causes of action for a limited number of international law violations even when such actions occurred within the territory of a foreign sovereign. Indeed, this Court's own decision in *Sosa* cited with approval several cases upholding accountability for human rights violations committed in foreign territory. *Id.* at 732 (citing *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467 (9th Cir.

1994); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)).[2]

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[2] Prior statements by the Executive branch support this interpretation. In 1980, for example, the United States submitted an *amicus* brief to the Second Circuit in *Filartiga v. Pena-Irala*, which recognized that the ATS authorizes actions for international law violations occurring outside the United States. Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (No. 79-6090). In 1995, the United States submitted another *amicus* brief to the Second Circuit in *Kadic v. Karadzic*, where it embraced the *Filartiga* analysis that the ATS could address violations of international law committed in foreign countries. Brief of the United States as Amicus Curiae at 4, *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (Nos. 94-9035, 9409069). In 2000, the State Department declared to the U.N. Committee against Torture that "U.S. law provides statutory rights of action for civil damages for acts of torture *occurring outside the United States*. One statutory basis for such suits, the Alien Tort Claims Act . . . represents an early effort to provide a judicial remedy to individuals whose rights had been violated under international law." Committee against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/28/Add.5 (2000), at para. 277 (emphasis added).

II. THE TEXT AND LEGISLATIVE HISTORY OF THE TVPA SUPPORT THIS INTERPRETATION OF THE ATS

In 1991, Congress adopted the Torture Victim Protection Act to supplement the remedies already available under the Alien Tort Statute.[3] Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992). The TVPA was established to provide a right of action to U.S. citizens for torture and extrajudicial killing, thereby affording U.S. citizens the same right already granted to foreign nationals through the ATS. The TVPA's text and legislative history reaffirm the long-recognized understanding that the ATS allows federal courts to recognize causes of action for a limited number of international law violations occurring in the territory of a foreign sovereign.

The TVPA establishes a cause of action for torture and extrajudicial killing. The statute provides, in pertinent part:

> An individual who, under actual or apparent authority, or color of law, of any foreign nation, (1) subjects an individual to torture shall, in a civil action, be liable for damages to that

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[3] The TVPA was first introduced in 1986 by Senator Arlen Specter to establish "a federal right of action against violators of human rights" and to authorize "suits by both aliens and U.S. citizens who have been victims of gross human rights abuses." 132 CONG. REC. S7062-7063 (June 6, 1986) (internal citations omitted).

> individual; or (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

28 U.S.C. § 1350 (note), at § 2(a). The language of the TVPA specifically references actions taken "under actual or apparent authority, or color of law, *of any foreign nation*," which offers clear evidence of its application to events within the territory of a foreign sovereign. *Id.* (emphasis added). Other provisions of the TVPA reinforce this interpretation. For example, the TVPA contains an exhaustion of remedies requirement, which precludes such actions "if the claimant has not exhausted adequate and available remedies *in the place in which the conduct giving rise to the claim occurred*." *Id.* at § 2(b). (emphasis added).

The TVPA's legislative history indicates it was meant to address a significant gap in U.S. law. While foreign nationals had a right to pursue civil remedies in U.S. courts for serious human rights abuses such as torture or extrajudicial killing, U.S. citizens had no comparable right.

According to the 1991 House Committee Report on the TVPA, torture violates standards of conduct accepted by virtually every nation, and its prohibition has attained the status of customary international law.[4] "These universal principles

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[4] House and Senate committee reports may be regarded as an explanation of legislative intent

provide scant comfort, however, to the thousands of victims of torture and summary executions around the world. Despite universal condemnation of these abuses, many of the world's governments still engage in or tolerate torture of their citizens, and state authorities have killed hundreds of thousands of people in recent years." H.R. REP. NO. 102-367, at 3 (1991). *See also* S. REP. NO. 102-249, at 2 (1991).

The House Committee Report acknowledges the role of the ATS in providing redress to victims of human rights abuses. It cited *Filartiga v. Pena-Irala*, 630 F.3d 876 (2d Cir. 1980), which first recognized the modern application of the ATS, with approval. But, it also recognized the limits of the ATS, which only extended a civil remedy to foreign nationals and not to U.S. citizens. The TVPA was meant to address this limitation.[5]

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where the meaning of a statute is obscure, *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474 (1921), or where the legislative history indicates that the meaning proposed by a party is inapposite, *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266 (1979).

[5] *See also Torture Victim Protection Act Hearing of 1989: Hearing on S.1629 and H.R. 1662 Before the Subcomm. on Immigration & Refugee Affairs of the S. Comm. on the Judiciary*, 101st Cong. 51 (1990) ("The Lawyers Committee believes that the Torture Victim Protection Act affords Congress the opportunity to both reaffirm the principles underlying the *Filartiga* decision and its progeny, and to provide a clear statement of legislative and

> The TVPA would . . . enhance the remedy already available under section 1350 in an important respect: While the Alien Tort Claims Act provides a remedy to aliens only, the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad. Official torture and summary executions merit special attention in a statute expressly addressed to those practices. At the same time, claims based on torture or summary executions do not exhaust the list of actions that may appropriately be covered by section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.

H.R. REP. NO. 102-367, at 4.

The House Committee Report makes clear the TVPA was not adopted to replace the ATS; rather,

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political support for victims of human rights abuse who are able to bring a case against their oppressors. The Torture Victim Protection Act will not replace the 200-year old Alien Tort Claims Act. Instead, it will make relief clearly available to United States citizens as well as aliens who are the victims of torture or extrajudicial killing abroad.").

it was designed to work in conjunction with that statute.[6]

> The TVPA would establish an unambiguous and modern basis for a cause of action that has been successfully maintained under an existing law, section 1350 of the Judiciary Act of 1789 (the Alien Tort Claims Act) . . . . Section 1350 has other important uses and should not be replaced. There should also, however, be a clear and specific remedy, not limited to aliens, for torture and extrajudicial killing.

Id. at 3.

The Senate Committee Report accompanying the TVPA offers the same analysis in nearly the

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[6] *See also Torture Victim Protection Act: Hearings and Markup Before the Committee on Foreign Affairs and Its Subcommittee on Human Rights and International Organizations*, 100th Cong., 1 (1988) (statement of Rep. Yatron, Member, House Subcomm. on Human Rights and International Organizations) ("International human rights violators visiting or residing in the United States have formerly been held liable for money damages under the Alien Tort Claims Act. It is not the intent of the Congress to weaken this law, but to strengthen and clarify it. Federal courts should not allow congressional actions with respect to this legislation to prejudice positive developments, but rather to act upon existing law when ruling on the cases presently before them.").

same language. *See* S. REP. NO. 102-249, at 3 (1991).

> The TVPA would establish an unambiguous basis for a cause of action that has been successfully maintained under an existing law, section 1350 of title 28 of the U.S. Code, . . . Section 1350 has other important uses and should not be replaced.

The legislative record also reveals that Congress adopted the TVPA as a bulwark against possible judicial curtailment of the ATS. At the time of the TVPA's adoption, only two circuit courts had addressed the ATS. As noted *supra*, Congress cited the *Filartiga* decision and its approach to ATS litigation with approval throughout its deliberations on the TVPA. At the same time, Congress expressed concerns about the D.C. Circuit's opinion in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), in which Judge Bork criticized the *Filartiga* approach to the ATS. H.R. REP. NO. 102-367, at 3-4; S. REP. NO. 102-249, at 4-5. This uncertainty surrounding the ATS coincided with the adoption of the Convention against Torture and subsequent ratification debates in the Senate.[7] As a result, the TVPA was

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[7] The Convention against Torture was referenced throughout the TVPA's legislative history. *See, e.g.*, S. REP. NO. 102-249, at 3 (1991) ("This legislation will carry out the intent of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

meant to ensure victims of torture and extrajudicial killing would have a right of action even if the courts developed a restrictive approach to ATS litigation. This reasoning appears throughout the legislative record.[8]

On signing the TVPA into law, President George H.W. Bush acknowledged the importance of providing a civil remedy to victims of torture.

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which . . . obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts."); H.R. REP. NO. 102-367, at 1, 3.

[8] In submitting the bill to the Senate, Senator Specter acknowledged the goal of the TVPA was to remove any uncertainty with respect to civil claims for torture and extrajudicial killing.

> The landmark case of *Filartiga v. Pena-Irala* confirmed that official torture is in fact a violation of the law of nations. . . . Since that holding, several recent decisions have questioned whether this statute provides a clear basis for future suits in U.S. federal courts. In *Tel-Oren v. Libyan Arab Republic*, for example, the judges dismissed an action brought under Section 1350 and noted the lack of clear congressional guidance on the subject. . . . The legislation I am introducing today . . . seeks to clarify this area of the law.

132 CONG. REC. S7062-7063 (June 6, 1986) (internal citations omitted).

> Today I am signing into law H.R. 2092, the "Torture Victim Protection Act of 1991," because of my strong and continuing commitment to advancing respect for and protection of human rights throughout the world. The United States must continue its vigorous efforts to bring the practice of torture and other gross abuses of human rights to an end wherever they occur.[9]

Statement on Signing the Torture Victim Protection Act of 1991, Mar. 12, 1992, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992).[10]

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[9] Statement on Signing the Torture Victim Protection Act of 1991, Mar. 12, 1992, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992).

[10] The U.S. Government has offered a similar interpretation of the TVPA in various pronouncements to the international community. *See, e.g.,* Committee against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/28/Add.5 (2000), at 61 ("While the Alien Tort Claims Act only provides a remedy to foreign nationals, the 1992 Torture Victim Protection Act allows both foreign nationals and United States citizens to claim damages against any individual who engages in torture or extrajudicial killing . . . ."). *See also* Committee against Torture, Consideration of Reports Submitted by States Parties Under Article

In *Sosa v. Alvarez-Machain*, 542 U.S. at 728, 731, this Court acknowledged the complementary and yet distinct roles of the ATS and TVPA. Moreover, this Court recognized that "Congress has not in any relevant way amended § 1350 or limited civil common law power by another statute." *Id.* at 725. Rather, Congress had reaffirmed the ATS through the TVPA. Congress "not only expressed no disagreement with our view of the proper exercise of the judicial power, but has responded to its most notable instance by enacting legislation supplementing the judicial determination in some detail." *Id.* at 731.

III. THE ATS AND THE TVPA PROVIDE REDRESS TO VICTIMS OF SERIOUS HUMAN RIGHTS ABUSES

The ATS and the TVPA serve an essential function by providing redress to victims of serious human rights abuses. Their work is complementary, but distinct, and this relationship should not be changed in the absence of explicit congressional action.

The Alien Tort Statute provides aliens with the opportunity to seek redress for their injuries – from torture and extrajudicial killing to genocide and war crimes. In *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995), for example, victims of genocide, war crimes, and torture were able to bring a successful action against Radovan Karadzic, the purported

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19 of the Convention: United States of America, U.N. Doc. CAT/C/48/Add.3 (2005), at 25-26.

leader of the Bosnian Serb faction responsible for the brutal campaign of ethnic cleansing in Bosnia-Herzegovina. In *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005), the family of a murdered Chilean government official brought a successful civil action for crimes against humanity, torture, and extrajudicial killing against the perpetrator. *See also In re Estate of Marcos Human Rights Litigation*, 25 F.3d at 1467 (successful ATS action against perpetrator of summary execution, forced disappearance, and torture); *Filartiga v. Pena-Irala*, 630 F.2d at 876 (successful ATS action against perpetrator of torture).

The Torture Victim Protection Act has played an equally significant role for over twenty years, providing U.S. citizens the opportunity to seek redress in U.S. courts for torture and extrajudicial killing and holding perpetrators accountable. In *Samantar v. Yousuf*, 130 S. Ct. at 2278, for example, the lead plaintiff was a U.S. citizen whose only hope for redress after having been subjected to torture was through the TVPA. In *Reyes v. Lopez Grijalba*, No. 02-22046-CIV, slip op. at 16-21 (S.D. Fl. 2006), two U.S. citizens brought a successful civil action through the TVPA for torture and extrajudicial killing. These lawsuits would not have been possible without the TVPA. *See also Chavez v. Carranza*, 407 F. Supp. 2d 925, 930 (W.D. Tenn. 2004) (U.S. citizens successfully recover under the TVPA for claims of torture and extrajudicial killing); *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass. 1995) (U.S. citizen

successfully recovers under TVPA for claims of torture).

Despite years of coexistence between the ATS and TVPA, Congress has not felt the need to revise either statute.[11] *Sosa v. Alvarez-Machain*, 542 U.S.

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[11] Four months after the *Sosa* decision, Senator Dianne Feinstein introduced a legislative proposal to restructure the ATS. Senate Bill 1874 would have placed significant restrictions on ATS litigation. 151 CONG. REC. S11423, 11433 (Oct. 18, 2005). Specifically, the bill would have limited ATS cases to six enumerated claims (torture, extrajudicial killing, genocide, piracy, slavery, or slave trading) but only if the defendant was a direct participant acting with specific intent to commit the alleged tort. S. 1874, 109th CONG. § 2(a) (2005). District courts would not have jurisdiction "if a foreign state is responsible for committing the tort in question within its sovereign territory." *Id.* Other provisions would have placed further restrictions on ATS litigation. For example, district courts would have been precluded from proceeding with ATS cases "if the President, or a designee of the President, adequately certifies to the court in writing that such exercise of jurisdiction will have a negative impact on the foreign policy interests of the United States." *Id.* at § 2(e). Anonymous complaints would have been precluded except in narrow circumstances. Contingency fee arrangements would have been precluded. *Id.* at § 2(f) and (g). Not surprisingly, the announcement of the bill was met with strong criticism. Eight days after it was submitted, Senator Feinstein withdrew

at 725. And, it has declined to do so despite extensive litigation and commentary involving both statutes.

Congress has established a civil liability regime that is designed to offer redress to victims, punish perpetrators, and deter future abuses. Limiting the ATS solely to cases arising in U.S. territory would eviscerate a legal framework that has been affirmed by the three branches of government on numerous occasions. This decision would cause further injury to victims of serious human rights abuses and would send the wrong message to perpetrators of such egregious acts.

CONCLUSION

Amici respectfully submit that the ATS allows federal courts to recognize causes of action for a limited number of international law violations even when such actions occur in the territory of a foreign sovereign. A contrary interpretation conflicts with the text of the ATS and the historical record. It would disregard the careful balance crafted by

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the bill from consideration. In a letter to Senate Judiciary Chairman Arlen Specter, Senator Feinstein indicated "that the legislation in its present form calls for refinement in light of concerns raised by human rights advocates, and thus a hearing or other action by the Committee on this bill would be premature." Letter from Senator Dianne Feinstein, to Senator Arlen Specter (Oct. 25, 2005).

Congress in the TVPA, which was adopted to complement the ATS. And, it would be contrary to countless judicial decisions, including this Court's decision in *Sosa v. Alvarez-Machain*.

Respectfully submitted, June 12, 2012

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